

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
1998 Biennial Regulatory Review -- )  
47 C.F.R. Part 90 -- Private Land )  
Mobile Radio Services; Replacement )  
of Part 90 by Part 88 to Revise the )  
Private Land Mobile Radio Services )  
and Modify the Policies Governing )  
Them and Examination of Exclusivity )  
and Frequency Assignment Policies )  
of the Private Land Mobile Services )

WT Docket No. 98-182  
RM-9222  
PR Docket No. 92-235

To: The Commission

**MOTION FOR LEAVE TO FILE LATE-FILED COMMENTS**

The Law Firm of Day, Catalano & Plache hereby seeks leave of the Federal Communications Commission to file Comments in the above-referenced proceeding one day out of time.<sup>1</sup> As pointed out in our Comments prepared for filing in this proceeding, whenever rules and regulations can be streamlined, clarified or eliminated, the public stands to benefit. In the same vein, and especially with respect to efforts aimed at streamlining rules, we believe it is important for the Commission to receive input from as many varied sources as possible.

In the attached set of Comments, we have focused our attention on regulatory matters where the impact tends to be more subtle than momentous. Nonetheless, for each rule examined, we have tried to perform a deliberate and thoughtful review of the basis for the

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<sup>1</sup> The date for filing comments in this proceeding was January 19, 1999.

underlying rule and the Commission's proposed changes. We have attempted, as well, to offer observations that will enhance the Commission's biennial review effort.

Years ago, in a private radio enforcement case that has long since been relegated to obscurity, FCC Hearing Examiner Sol Schildhouse took pains to explain why even the "little cases where the stakes are small" held significance for the FCC and the public. Judge Schildhouse concluded that that such cases were important because "docket numbers are people, in these cases perhaps more frequently than in some others."<sup>2</sup>

In an analogous way, the matters touched on in the attached Comments will have an impact upon people, in some cases expanding the use of certain Part 90 frequencies, in other cases acting to increase the degree of uniformity and consistency in the Commission's rules. This law firm supports the Commission's biennial review efforts. Believing that this is truly a proceeding where it is important to encourage maximum participation, we request leave to file the attached Comments one day out of time. We believe that the public interest in promoting thoughtful review of FCC efforts to improve the usefulness of the Part 90 rules, and sharpen their focus, will be served by acceptance of these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Frederick J. Day". The signature is written in a cursive, slightly slanted style.

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January 20, 1999

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<sup>2</sup> *In re J. Botti Enterprises, Order to Show Cause*, 3 F.C.C.2d 373, 377 (1965).

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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<b>In the Matter of</b>	)	
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<b>1998 Biennial Regulatory Review —</b>	)	<b>WT Docket No. 98-182</b>
<b>47 C.F.R. Part 90 — Private Land Mobile</b>	)	<b>RM - 9222</b>
<b>Radio Services; Replacement of Part 90 by</b>	)	<b>PR Docket No. 92-235</b>
<b>Part 88 to Revise the Private Land Mobile</b>	)	
<b>Radio Services and Modify the Policies</b>	)	
<b>Governing Them and Examination of</b>	)	
<b>Exclusivity and Frequency Assignment</b>	)	
<b>Policies of the Private Land Mobile Services</b>	)	

**To: The Commission**

**COMMENTS OF  
DAY, CATALANO & PLACHE, PLLC**

The law firm of Day, Catalano & Plache, PLLC ("DC&P") hereby respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* ("NPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on October 20, 1998 in the above-captioned dockets. These Comments support the proposals presented in the *NPRM* for streamlining Part 90 of the Commission's rules.

**I. STATEMENT OF INTEREST**

DC&P is a Washington, D.C.-based law firm devoted primarily to the practice of telecommunications law. A large percentage of DC&P's clients are Private Land Mobile Radio Service ("PLMRS") licensees whose licenses are subject to the rules and regulations promulgated under Part 90 of the Code of Federal Regulations ("C.F.R."). DC&P analyzes and applies Part

90 rules every working day, and therefore applauds the Commission for its initiative, *sans* statutory mandate, to review Part 90 as it applies to PLMRS licensees and licenses in order to eliminate rules that are obsolete or ineffective, and streamline and clarify those rules that should be retained.

## II. DISCUSSION

The changes to Part 90 recently wrought by the "Refarming Proceeding"<sup>1</sup> and the Universal Licensing System ("ULS") proceeding<sup>2</sup> have made Part 90 a particularly cumbersome rule section to apply. One must remember to ignore the obsolete radio services sections, which still appear in the October 1997 version of the CFR, albeit in an imperceptibly smaller font, while referring to the Appendix of the ULS *R&O* to determine which Part 90 rules have more recently been removed or modified. Yet, any time rules and regulations can be streamlined, clarified or eliminated, the public stands to benefit. When the next set of CFR's are issued, the old radio service sections should be gone, the modifications made by the ULS proceeding should be in place, and hopefully several of the Commission's proposals in the instant *NPRM* will be adopted

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<sup>1</sup> *In re* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Report and Order*, 10 FCC Rcd 10,076 (1995), *Memorandum Opinion and Order*, 11 FCC Rcd 17,676 (1996), *Second Report and Order*, FCC 97-61 (rel. March 12, 1997) ("*Refarming Proceeding*").

<sup>2</sup> *In re* Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services; Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States, *Report and Order*, WT Docket No. 98-20; WT Docket No. 96-188; RM-8677 (rel. Oct. 21, 1998) ("*ULS R&O*").

and included.

**A. Section 90.35 Should Be Modified to Eliminate the Cargo-Handling Distinction for Use of Frequencies in the 450-470 MHz Band**

Section 90.35(c)(60)(i) of the Commission's rules lists 30 frequencies that are expressly limited to use at dockside for cargo handling. The Personal Communications Industry Association ("PCIA") indicates that it receives many requests for coordination of these frequencies in locations other than dock and cargo handling areas, and the Commission queries whether these frequencies should be made available for non-voice communications away from dockside, or whether the cargo-handling distinction should be entirely eliminated.<sup>3</sup>

The need for these frequencies to be available at dockside for cargo handling is hardly a reason to foreclose their availability for other purposes away from dockside locations — to do so is to underutilize valuable spectrum. The 30 frequencies listed in the table at Section 90.35(c)(60)(i) should be made available for general low-power, voice and non-voice communications at any location, without reference to the specific use. Making these frequencies generally available comports with the elimination of separate frequencies for distinct radio services and the creation of the consolidated Industrial/Business ("I/B") Pool.

**B. Length of License Term and "Placed in Operation" Deadline**

DC&P endorses the Commission's proposals to extend PLMRS license terms from five- to 10 years, and to lengthen the time available for placing a station in operation from eight

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<sup>3</sup> *NPRM* at ¶ 7.

months to 12 months. As the Commission notes, there is a beneficial cost-savings associated with the longer license term and fewer renewal applications. This benefit will hold true, however, only if the Commission refrains from artificially increasing the regulatory fee associated with a 10-year PLMRS license. The Commission must avoid the temptation to raise fees solely for the purpose of compensating for revenues lost by the extinction of the five-year license.

The Commission should likewise amend Section 90.155 of the rules to extend to 12 months the period of time from date of grant for placing a station in operation. Such an amendment increases the uniformity of regulations under Part 90 by eliminating the seemingly arbitrary eight-month deadline, which is particularly incongruous given the 12-month deadline enjoyed by most other Part 90 services.

**C. “Slow Growth” Authorization for Public Safety Agencies**

DC&P wholeheartedly supports the request of the Association of Public-safety Communications Officials-International, Inc. (“APCO”) that public safety agencies be permitted to apply for slow-growth authorizations pursuant to the provisions of Section 90.629, without the burden of making a definitive showing of imminent funding for the whole of a wide-area system. It is not only the Refarming Proceeding, to which APCO refers, that is generating wide-area system opportunities for public safety entities, but the technological developments arising from the allocation of frequencies in the 700 MHz band,<sup>4</sup> not the least of which involves local,

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<sup>4</sup> *In re* The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, *First*

regional and nationwide interoperability. In many respects, public safety agencies are more deserving of slow-growth authorizations than are commercial applicants, insofar as the implementation of public safety wide-area systems inure directly to the public's safety and welfare. The Commission should adopt the wording as proposed for Section 90.155(b).

**D. Frequency Coordination for the 220-222 MHz Band**

DC&P has no objection to requiring public safety agencies to submit applications for 220 MHz frequencies to a public safety frequency coordinator prior to filing at the FCC, so long as the requirement does not introduce significant expense or delay into the process of licensing public safety entities with necessary communications capabilities. The utilization of frequency coordinators could potentially improve public safety agency access to 220 MHz frequencies, since coordinators can establish an accurate and up-to-date database of 220 MHz frequencies that is more accurate and rapidly retrievable than anything that public safety entities could access themselves.

**E. Sharing PLMRS Frequencies with Federal Government Agencies**

The Commission should permit public safety agencies to share their radio facilities with others, including Part 90 eligibles or Federal Government entities, on a cost-shared, non-profit basis. Public safety licensees are the best determiners of whether their particular systems may be safely shared with non-public safety end-users without jeopardizing critical safety and emergency communications. Public safety communications systems and facilities may also benefit from

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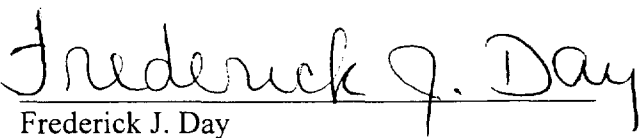
*Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, (rel. Sept. 29, 1998).

cost-sharing to the extent that more advanced and sophisticated equipment can be afforded if costs are shared. Many public safety agencies are forced to make do with less than their ideal systems simply because they operate with constrictive budgets. The Commission should not dictate which public safety agencies will be eligible to take advantage of facilities-sharing. Only individual agencies are capable of determining whether their facilities can be shared with non-public safety entities without compromising the integrity and safety of their systems.

### III. CONCLUSION

DC&P supports the Commission's proposals discussed herein, and encourages the Commission to continue soliciting ideas for streamlining the regulations governing Part 90 licenses.

Respectfully submitted,  
**DAY, CATALANO & PLACHE, PLLC**

By:   
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Dated: January 20, 1999

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